

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

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|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 4:03CR3055 |
| |) | |
| v. |) | |
| |) | |
| ISIDRO TERRIQUEZ CHAVEZ, |) | MEMORANDUM OPINION |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court on the defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 55). For the following reasons, the motion will be denied.

DISCUSSION

This is the second motion the defendant has filed pursuant to 28 U.S.C. § 2255. His first § 2255 motion, filed on January 30, 2006, was denied by the Court on February 6, 2006 (see Filing Nos. 53 and 54).

The defendant's current § 2255 motion constitutes a "second or successive motion" within the meaning of 28 U.S.C. § 2255. 28 U.S.C. § 2255; see *United States v. Nicholson*, 231 F.3d 445, 454 (8th Cir. 2000); see also *United States v. Allen*, 157 F.3d 661, 664 (8th Cir. 1998); and *Vancleave v. Norris*, 150 F.3d 926, 927-29 (8th Cir. 1998). A petitioner seeking to file a second or successive § 2255 motion challenging their conviction or sentence must first obtain circuit court certification. 28 U.S.C. § 2255 (2001); *Allen*, 157 F.3d at 664; *U.S. v. Arnold*, 2001 WL 435648 at 1 (D.Minn. 2001). Because the defendant has

not received approval from the Eighth Circuit to file a second or successive § 2255 motion, the Court lacks jurisdiction over his claims. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000); *Allen*, at 664; *United States v. Alvarez-Ramirez*, 128 F.Supp.2d 1265, 1267 (C.D.Cal. 2001). Lacking jurisdiction, defendant's motion will be denied without prejudice. Accordingly, a separate order will be entered in accordance with this memorandum opinion.

DATED this 9th day of November, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court